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Chapter 13

50 years of Clinical Legal Education: Looking Back to the Future

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Abstract

This chapter considers the past, present, and future of clinical legal education (CLE). Reflecting on the history of clinical legal education in the UK and beyond, the chapter traces the rise in experiential learning to consider its role in both the promotion of the values of social justice and the educational benefits for students. It considers the place of clinical legal education within the law curricula and advocates for exploring new ways of conceiving how we deliver clinical programmes. The chapter offers insights into emerging trends in CLE and addresses the prospect of UK law schools' increased reliance on clinical programmes as a result of changes to the training and qualification of solicitors in England and Wales.

1. Introduction

In Roman mythology Janus, the doorkeeper of the heavens, presided over all forms of transitions, including doorways and beginnings and endings. King of Latium (a region of central Italy), he is often depicted as having two heads, one looking backwards whilst the second simultaneously looks forward (Davenport, 2017). Likewise, this chapter attempts to frame the contemporary practice of CLE in UK law schools both by looking backwards at the history of CLE, particularly over the last 50 years, and by looking forwards to consider what the future might hold for CLE in the next half century.

The metaphor of Janus is particularly resonant for CLE as it frequently occupies the centre ground between different views and positions within legal education more generally. For example, CLE is often the front line of discussions within law schools about whether the undergraduate law degree should be a purely academic undergraduate discipline or professional training for a legal career. There is also debate amongst clinicians as to whether the aim of CLE is to offer social justice (in the form of access to justice to the public) or to be of educational benefit to students through the development of their skills, particularly their employability skills (Drummond and McKeever, 2015). The response of UK CLE practitioners to these issues has often been distinct from those of the US pioneers of the movement, and these nuances will be explored in this chapter.

The definition of clinical legal education itself is contested and it is difficult to find one definition agreed upon by everyone (Kerrigan and Murray, 2011). Many academics based in the USA, Canada, Australia and Africa define CLE as involving students working in a law clinic which provides legal advice and information to a group in society who are underprivileged or lack access to a legal system (for example, Winkler, 2013; Giddings, 2008; Thomson, 2014). Within the UK there is generally a broader definition of CLE as being 'learning by doing': a learning environment where students identify, research and apply knowledge in a setting which replicates the world in which law is practiced (Grimes and Gibbons, 2016). This experiential approach exposes students to real or realistic legal issues and problems through

different activities including simulation activities, advice clinics, placement or externships, or Street Law projects where students provide public legal education to members of the public (Grimes and Gibbons, 2016; Kerrigan and Murray, 2011). This lack of agreement on an overarching definition reflects the wide variety of practices and projects within CLE as well as the different contexts within which CLE has developed in individual countries. We will first consider the foundations of CLE in the USA.

2. The History of Clinical Legal Education

2.1 The birth of the CLE movement in the USA

CLE first developed in the USA in the 1930s, at which time US law schools had offered postgraduate legal study for students to qualify as attorneys for around 60 years. Prior to the 1870s, most US attorneys qualified through an apprenticeship. In 1870 Harvard Law School introduced the case method of instruction, where students studied a section of appellate opinions and distilled the legal principles from them using the 'Socratic' method of classroom teaching (Grossman, 1973). Other law schools followed this example and qualification as an attorney by postgraduate study became the accepted norm.

This case method was criticised in the 1920s by legal realists, who stressed the importance of law students understanding the interactions of society and the work of courts and lawyers to understand how the law and legal profession actually function in a society (Frank, 1933). Jerome Frank and Karl Llewellyn urged law schools to equip students with the ability to adapt to a rapidly changing legal environment and to use their legal knowledge in practice, recommending the establishment of legal clinics in law schools (Frank, 1933; Llewellyn, 1945; Grossman, 1973). This led to the introduction of simulated practice courts in the 1950s, and the establishment of law clinics from the 1960s onwards (Grossman, 1973).

2.2 50 years of expansion

The growth of law clinics has been particularly marked over the last 50 years, both in the USA and beyond. In the USA this growth was due primarily to two factors. Firstly, governmental funding was made available for law clinics from the 1960s onwards, following which philanthropic organisations and alumni donations maintained the income required to staff and run law clinics in law schools (Joy, 2012). The second factor was the USA government's 'War on Poverty', which focused attention on the need to provide legal services for those who could not afford legal representation (Grossman 1973). Both in the 1960s and now, there is no comprehensive legal aid system in the USA; state funding is provided in criminal cases through the public defender's office and court appointed advocates, with no automatic right to civil legal aid (UNODC, 2016). Most of the privately funded legal services are targeted at the wealthiest 20% of the population, with some limited legal aid available for the poorest in society (Kemp, 2016). Therefore, American middle-income earners, as well as poor and marginalised communities, lacked access to legal advice and representation (Kemp, 2016). In the 1970s the American Bar Association estimated that the middle 70% of society were not getting their legal needs met (Orsi, 2013). This remains the situation fifty years on today where over 85% of the civil legal problems reported by low-income Americans received inadequate or no legal help (Kemp, 2016; Legal Services Corporation, 2017) There was therefore significant unmet legal need in the USA fifty years ago and the development of law clinics through the clinical movement was a significant contribution to the provision of legal advice and representation which promoted social justice for the American public. Within this context, we can see why nearly all of the early writing relating to the establishment of CLE focused on community service and social justice as being the main objective, with the educational benefit for students being secondary (Grossman, 1973).

In the 1970s the CLE movement also started to inspire the establishment of programmes in other countries around the world: initially in Canada, Australia, the UK, and South Africa (Winkler, 2013). The next section will consider the reasons for the spread of CLE to other countries, before examining the history of CLE in the UK.

2.3 The growing global influence of CLE

Following the development of the clinical movement in the USA, the first countries to establish law clinics as part of a CLE programme in universities were Canada (in 1971), South Africa (in 1972), the UK (in 1973) and Australia (in 1975) (Winkler, 2013). In Canada, South Africa and Australia, their social and political contexts ensured that social justice was, as in the USA, an important influence in establishing law clinics to ensure access to justice and the courts for the most marginalised and poorest of citizens.

Since 2000 there has been a much greater development of CLE across the globe (Giddings, 2008). CLE expanded to a number of countries in the global south to supplement the work of national legal aid bodies in assisting communities to access justice (McQuoid-Mason, 2011). At the same time CLE pedagogy began to influence law schools in Russia and Eastern Europe following the collapse of the USSR (Winkler, 2013). CLE programmes in these countries tended to focus on issues such as the rule of law, human rights, and democracy; possibly due to the establishment of new democracies and legal systems following the overturning of old regimes (Winkler, 2013).

By contrast the UK's 50-year development of CLE programmes has taken a slightly different form, as it responded to its own political and social context and in particular the availability of state funded legal advice and representation.

2.4 50 years of CLE in the UK

The development of CLE in the UK reflected its distinct social and economic context. In common with the USA, before the mid-1800s most solicitors and barristers qualified following a period of apprenticeship, although when English law was introduced into university education from the 1850s onwards it was as an undergraduate subject. English law degrees did not adopt the same narrow educational focus as US law schools and instead stressed their academic status incorporating a liberal arts approach (Slapper, 2011). As qualification routes developed in the Victorian period, the existing division of training into academic, vocational, and work experience stages was formed with the undergraduate law degree focusing on the academic stage. Nevertheless, law schools were aware that many of their law graduates went on to the vocational training stage and qualified as solicitors or barristers, which led to a tension developing in law schools as to whether they were teaching a purely academic undergraduate degree or equipping students for their subsequent professional training (Goldfarb, 2012).

Following the Second World War the UK government introduced as part of the welfare state, state funded legal advice and assistance for both civil and criminal law issues, through the Legal Aid and Advice Act 1949. This paid the legal fees of solicitors and barristers for both legal advice and representation. A number of not-for-profit advice agencies and Law Centres also sprang up, funded by local authority grants (Kemp, 2016). Over the next forty years the legal aid scheme expanded until most legal issues were covered and by 1996/7 the net legal aid cost (after contributions from assisted person) was £1476 million a year from a total government spend of £330 billion (Rickman et al, 1999; H M Treasury, 1998). Individuals who could not afford legal fees could seek advice on most legal issues from advice agencies, legally aided solicitors, or law clinics (Pleasence, 2004). This meant there was not the level of unmet legal need seen in the USA and other countries, so the social justice imperative for the introduction of CLE in the UK was arguably not as influential.

The University of Kent introduced the first law clinic in a UK university in 1973, closely followed by the University of Warwick in 1975, initially aimed at university students but then opened to members of the public in the surrounding areas (Winkler, 2013). However, within a few years the clinics had either closed or separated from the university law school due to disagreements over the role of the clinic (Winkler, 2013). In the 1980s there were just four university law clinics in existence in the UK: Birmingham, Warwick, South Bank and Northumbria (Kemp, 2016). These early adopters of CLE were explicit that the reason for their clinical activities was the educational benefits for the students, rather than being driven by a commitment to provide legal services for the public who could gain legal advice from government-funded schemes (Winkler, 2013).

CLE started to gain traction in the UK in the 1980s following publications from educational theorists, who stressed the importance of experiential learning for students. These developed ideas in the tradition of the early twentieth century philosopher John Dewey who emphasised the importance of experience-based learning through exposing students to the working world of which they were soon to be part (Thomson, 2014). Theorists in the 1980s developed this further, linking experiential learning with reflective practice. Professor David Kolb developed his learning styles model in 1984 which included a cyclical model for reflective practice; this was adapted by Graham Gibbs in 1988 into a six step reflective cycle (Kolb, 2014; Gibbs, 1988, Kemp, 2016). At the same time Schon developed the theory of the reflective practitioner (Schon 1983; Kemp, 2016). These theories stressed the importance of putting into practice the theoretical knowledge acquired through education and reflecting on the outcome, which would develop students' ability to improve their professional actions and judgment and to adapt to changing circumstances in the workplace.

As these educational theories were applied to the study of law, this led to renewed interest in CLE which enabled students to experience practical legal work whilst studying for their law degree. There was 'a flurry of activity on the clinical front' in the 1990s led by the Universities of Northumbria, Sheffield Hallam, and Kent (Grimes, 2000). During this time the nationwide Clinical Legal Education Organisation was formed.¹

At this time there was a marked difference between universities founded since 1960 and those founded earlier. Kemp notes that CLE 'has effectively been pioneered by recently established universities' with a 'relatively low level of support for CLE activities provided by traditional' (i.e. older university) law schools (Kemp, 2016). Kent and Warwick were founded in 1965, York in 1963 and Northumbria, Nottingham Trent, and Sheffield Hallam in 1992. The first 1994/5 LawWorks survey noted that 23% of the new universities offered live client clinics, while only 5% of the old universities offered the same (Grimes, 2000). The inclusion of CLE programmes into new universities' undergraduate courses offered an opportunity to focus on students' employability skills, improve students' opportunities of obtaining graduate employment and assist in student recruitment and marketing. However, the new universities were also open to adopting the new experiential educational pedagogies which supported this approach (Kemp, 2016). By contrast the old, more traditional universities tended to adopt a conventional 'black letter' approach to legal education informed by their research (Kemp, 2016).

In response to the educational theories on experiential and reflective learning, the UK also saw a rise in simulated clinics and activities during this time. York University Law School was influential in simulated experiential learning, as well as offering students an opportunity to work with 'live' clients in their law clinic (Kemp, 2016).

There was further incremental growth in the number of law schools introducing CLE in the 2000s including Nottingham Trent University, Strathclyde University and Lancaster University. This seems to have been in response to employers' concerns about the lack of appropriate

¹ <http://www.cleo-uk.org/>

skills of law graduates entering the profession. The development of CLE in the UK during the first forty years therefore focused on the educational benefit to students of acquiring employability skills rather than concerns about social justice. However, this changed in the 2010s, when there was an explosion of interest in CLE in the UK.

2.5 The growth of CLE in the UK in 2010s

Since 2010 there has been a rapid expansion of CLE within UK law schools. As will be discussed below, these changes were driven by a focus on employability following the adverse economic climate in this decade and social justice concerns following reform of the legal aid scheme.

The UK legal profession faced a perfect storm in the 2010s. The economic recession in 2008, the globalisation of the legal profession and the potential impact of technology led to new pressures and uncertainties for law firms (Thomson, 2014). Law students became concerned about whether there would be a reduction in the size of the legal profession and shrinking graduate job opportunities, while law schools considered whether traditional legal education was sufficient to properly prepare graduates for the realities of legal practice which had become more uncertain in the 21st century (Thomson, 2014).

At the same time, student tuition fees at English universities (which were introduced at the rate of £1,000 a year in 1998) were increased to £3,000 a year in 2004 and then up to £9,000 a year in 2010 (Anderson, 2016). Students were concerned about their chances of obtaining a job within the legal profession at the end of their university studies, at the same time their tuition costs rose nine-fold. In response, many universities turned to CLE as a way to enhance the graduate employment opportunities of their students and reassure their students about their future employability. The pedagogical basis of CLE in developing reflective practitioners able to discover, synthesize and apply relevant legal principles in any substantive or developing area of law offers some assurance that law students will be able to work in a rapidly changing legal arena and profession (Goldfarb, 2012). The practical work experience offered by CLE increases students' employability and is seen as giving them a competitive edge when applying for graduate legal jobs (Kemp, 2016).

The second factor which led to an increase in clinical programmes was increasing unmet legal need following the reform of the legal aid scheme introduced by the Legal Aid Sentencing and Punishment of Offenders Act 2012. As part of the spending and efficiency cuts introduced following the 2008 recession, the government reformed the legal aid scheme to reduce costs. The majority of civil law was taken out of the scope of legal aid, and after 2012 state-funded legal aid was not generally available for issues involving social welfare, debt, employment, family, housing and mental health law. Where legal aid remained, the financial eligibility criteria were made more severe so that most of those in employment were no longer eligible for legal aid. The same budgetary constraints affected local authorities who stopped funding advice centres and law centres. Following 2012 the number of legally aided solicitors, not-for-profit law clinics and legal advice agencies drastically reduced leading to 'advice deserts' in geographical areas of the UK. This had a disproportionate effect on the ability of the most vulnerable and marginalised groups to access justice (Sommerland and Sanderson, 2013; Law Society, 2017). The level of unmet legal need increased dramatically, something not previously seen in the UK (Law Commission, 2014).

While the first 40 years of the development of CLE in the UK focused on the educational benefits for students, the last decade has presented mounting levels of unmet legal need which clinicians and law students responded to by developing programmes that could assist with social justice and access to justice for the public, particularly in civil law issues. Concurrently there was a vigorous debate about the role of CLE and whether it is the responsibility of clinical programmes or the government to improve access to justice (Kemp,

2014). These two forces (employability and social justice) still shape the contemporary landscape of CLE in the UK as will be discussed in Part 2 below.

3. The contemporary CLE landscape

The previous section has traced the development of clinical legal education from its origins as a pedagogical counterweight to the prevailing case study method used in US law schools, to its later expansion across common law jurisdictions. It also has traced the increasing importance given to social justice in the practice of clinical legal education in UK law schools. This section aims to take stock of the contemporary position of clinical legal education within university law schools before progressing to a discussion on the future directions of this increasingly influential sub-discipline in Part 3. It begins by placing current CLE practice in UK law schools in the context of the contemporary global clinical movement, before highlighting how this pedagogy can be adapted for delivery in an online distance learning environment, using The Open University Law School's Open Justice Centre as a case study. This exploration of the use of technology to design and deliver experiential learning activities, which are the bedrock of clinical programmes, is of particular contemporary significance due to the Covid-19 pandemic. Social distancing measures have made it more difficult for universities to run face-to-face clinical programmes and interest in online alternatives has unsurprisingly increased.

3.1 CLE in Global Perspective

Frank Bloch's edited collection on clinical legal education gave a clear illustration of the global reach of this pedagogical approach (Bloch, 2010). By 2020, strong international networks of clinical educators had become well established. These now include the Global Alliance for Justice Education, in addition to active regional and national bodies including the European Network for Clinical Legal Education, the US-based Clinical Legal Education Association, and the UK-based Clinical Legal Education Organisation to name but a few. These groups support a vibrant programme of conferences, seminars and knowledge sharing events. The plethora of professional organisations devoted to clinical legal education is supplemented by a growing number of journals which address clinical legal education issues including the International Journal of Clinical Legal Education, the Clinical Law Review, the Journal of Public Legal Education, the Law Teacher and the Asian Journal of Legal Education. Thus, it is not unreasonable to claim that the reach and influence of clinical legal education has never been greater than it is in 2020. This is borne out by the UK experience briefly addressed below.

3.2 CLE in the UK today

CLE is a significant feature in the curricula of UK law schools. The most recent published comprehensive survey of clinical activity was conducted by Carney *et al* in 2014 on behalf of Law Works.² The survey has taken place periodically since the mid-1990s and offers a useful snapshot of CLE activity in UK higher education. In 1995, less than a quarter of post-1992 Universities and only 5 % of pre-1992 Universities ran clinical programmes (Grimes, 2000). From this modest base, the most recent survey demonstrated 96% of law schools who responded reported running some form of clinical activity, estimated at over 10 000 students taking part in CLE activities across the UK (Carney *et al*, 2014).

The 2014 survey highlighted the variety of activities taking place under the CLE umbrella. Public legal education activities were reported as being the most common, followed by the more resource-intensive provision of legal advice services. Other work included criminal

² Law Works is the Law Society's pro bono charity. The Law Society is the professional body for Solicitors operating in the legal system of England and Wales. The latest survey of UK law schools is being conducted in 2020.

appeal project and court and tribunal support and representation in addition to miscellaneous work such as mentoring and form-filling assistance. (Carney *et al*, 2014). The trend towards incorporating clinical methods into the assessment regime of undergraduate legal education continued in an upward direction, with 25% of law schools providing academic credit for their CLE programmes, an increase from a base of 10%. (Carney *et al*, 2014,) Drummond and McKeever's (2015) more recent but smaller survey of 62 university law schools highlights the importance of collaboration with external partners. Three quarters of their respondents reported collaboration with external partners as being important to help university clinics to expand the range of types of advice that can be adequately supervised.

Clinical practitioners continue to develop innovative ways of offering legal advice clinics including in 2015 Nottingham Trent university becoming the first law clinic regulated as an alternative business structure by the Law Society. This offers their students the opportunity to undertake experiential learning within a regulated environment, as well as offering the potential to charge fees for the legal advice work it undertakes with members of the public (Kemp, 2016). Other law schools developed partnerships with organisations to provide legal advice and assistance such as the Community Legal Outreach Collaboration Keele (CLOCK) (Keele University) and partnerships with the Welsh Rugby Union (Swansea University) and Dementia UK and the Alzheimer's Society (University of Manchester).

The increase in clinical activity, and the move towards more of it being formally assessed, is perhaps reflective of the broader trends identified in Part II of universities foregrounding the development of skills that are attractive to employers, in addition to increased competition amongst higher education providers to offer innovative educational experiences to their prospective students. However, notwithstanding these market-driven influences, both surveys highlighted the social justice and educational values as being key motivating factors for the academic staff working to provide these opportunities (Carney *et al*, 2014; Drummond and McKeever, 2015)

3.3 The Open University and CLE

Law was a relative latecomer to The Open University (OU) curriculum. The OU began to offer law degrees, in partnership with the College of Law, in 1997 before releasing its own degree curriculum in 2014. The Open Justice Centre was established as part of the expansion of the OU Law School in 2016 with the aim of utilising digital technologies to provide opportunities for students to participate in clinical legal education. The OU law student body is unique, not only being the largest in Europe, with over 7000 students, but also in the prevalence of part-time learners and its use of distance learning pedagogy. This meant that many of the traditional modes of clinical legal education discussed earlier in this chapter would have to be reimagined in order to allow online distance learning students to participate. The problem, as outlined in McFaul *et al* (2020), was to design a learning programme that could engage students studying mostly part-time and based across the four nations of the UK in meaningful and socially useful legal pro bono activities. The solution was to develop *Justice in Action*, a 30-credit level 6 module which was incorporated into the undergraduate law degree. The module is delivered online in three phases:

3.3.1 Phase I

This introduces students to academic discourse around themes of social justice, professional identity, and professional ethics before developing transferable skills of legal research, writing, oral advocacy and online collaboration. There is specific focus on how technology is transforming the delivery of legal services and on developing the skills and competencies required for professional practice.

3.3.2 Phase II

This involves students collaborating online to support the delivery of a range of pro bono projects. These projects fit into three broad categories: bespoke online projects run entirely online, projects which are prepared and supported online but delivered in face to face settings, and projects which are hosted by external partners. Bespoke online projects include our online legal clinic (Ryan, 2019), providing supervised legal advice to members of the public on civil law issues, in addition to the Digital Justice project which supports students in the creation of smartphone apps and chatbots for the delivery of public legal information (McFaul *et al*, 2020). Projects supported online but delivered in face-to-face environments include prison-based legal research and guidance sessions, in partnership with the St Giles Trust, in addition to a series of school-based Street Law sessions. Projects hosted by external partners include externships with legal support charities such as Support Through Court and Citizens Advice.³

3.3.3 Phase III

The final phase of the module requires students to produce an assessed reflection on their participation, drawing on the themes introduced in phase I.

The module has now grown to take an intake of just under 200 students per year, with a significant number of additional students taking part in clinical projects on an extracurricular basis. The Open Justice Centre has demonstrated that it is possible to take the essence of clinical legal education that is now a mainstay of legal education throughout the world, and to translate it successfully into an online environment. That is not to say that the endeavour is not without significant challenges, an account of which, in addition to a summary of the emerging pedagogical issues presented by this approach, is given in McFaul *et al* 2020. A key consideration in the development and evaluation of the Open Justice Centre's experiment with online experiential legal education, is the role that technology may play in shaping not only the next 50 years of legal education, but the legal profession itself: topics which will be addressed below.

4. The Future of CLE

Having traced the rise in experiential learning, and the rich history of clinical legal education, in this section we consider the factors that might shape the future of CLE over the next 50 years. Each law school has developed its own approach to clinical legal education, and this functions to allow universities to differentiate and create unique offerings within their own institutions. There is evidence to suggest that both students and employers place value on the practical legal skills that are developed through engagement in clinical programmes (Thomas 2018). It might therefore be assumed there will be an expansion of CLE over the next 50 years.

4.1 Expansion and sustainability

While the last fifty years has seen the establishment and rise of clinical legal education programmes, the next fifty years are likely to be about sustaining programmes over the long term. One of the challenges universities face is how to provide scalable work-related opportunities for students. Clinical programmes are expensive to run because the need for supervision requires lower student-to-teacher ratios and resources are required to ensure the value and benefits of CLE can be delivered (Gilman, 2019). In examining how UK law schools foster the sustainability of CLE, we must consider that universities are in a period of transformation and the future of curriculums is linked to both changes to the profession and the policies of universities (Giddings, 2008). Many law schools have embedded CLE into their

³ A fuller account of Open Justice projects is available at <<http://law-school.open.ac.uk/open-justice>>.

curriculum as credit-bearing modules; this approach has been adopted as a means of ensuring the continued viability and sustainability of clinical work.

In line with the changes proposed by the Solicitors Regulation Authority (SRA) to the way in which solicitors train and qualify in England and Wales, there may be further opportunities to embed clinical programmes into the curriculum for those law graduates who want to become solicitors.⁴ The Legal Services Board have approved the SRA plans to replace the Legal Practice Course with the two-part Solicitors Qualifying Examination (SQE). To qualify as a solicitor in England and Wales, students will need to have a degree in any subject (or equivalent qualification or work experience), pass both SQE 1 and 2 and have two years' qualifying work experience (QWE).⁵ Although the new regulations retain a period of legal work experience, qualifying work experience is more flexible than its predecessor, the training contract, as it can be undertaken across four different organisations and there is the potential for a wider range of experiences to qualify. The draft regulations do not specify what type of work experience counts for QWE. The SRA state that QWE is any experience of 'providing legal services' that provides the opportunity to develop some or all of the competencies required to practise as a solicitor.⁶ The SRA has indicated that clinical legal education can qualify as work experience. However, the draft regulations do not reference CLE or law clinics; therefore, at the current time it is still uncertain as to what could count as QWE.

Responding to these changes raises interesting questions about the potential impact on the pedagogical value of clinical programmes. Students may be attracted to universities that offer opportunities to count their time in clinical legal education projects as part of their qualifying work experience, and some universities might be attracted to the idea of making such an offer as a way of pursuing competitive advantage, both of which have implications for CLE's educational and social justice value. Clinical work enables students to develop a range of skills and has a role in supporting student employability about which Thomas (2018) argues law schools should be more explicit.

Students often have different or mixed motivations for doing CLE: some are deeply concerned about social justice whilst others are interested in improving their employment prospects (McKeown, 2015 and 2017). The potentially different drivers for CLE are not necessarily problematic, but there are increasing pressures on universities to meet changing student expectations. If law schools place unrealistic expectations on clinical programmes to use CLE as a means of offering QWE to service student demands, that has the potential to undermine the core values of CLE and pro bono. The increasing focus on clinical programmes brought about by SQE will require law schools to pay close attention to the challenges and opportunities presented, and multiple strategies may be required to develop different clinical methodologies.⁷

⁴ From September 2020 qualification as a barrister requires a degree in law (or another subject plus the Graduate Diploma in Law). Further, a vocational component consisting of Bar training with an Authorised Education and Training Organisation is required. The Bar Standards Board website details the organisations that have been authorised to provide the vocational training. Once the training has been completed the person is required to undertake a 12-month pupillage which is a period of work based and practical training under the supervision of an experienced barrister.

⁵ In Scotland the Solicitors (Scotland) Act 1980 sets out the training and legal education requirements for entry into the Scottish legal profession. Solicitors in Northern Ireland are regulated by the Law Society of Northern Ireland. The Institute of Professional Legal Studies (IPLS) at Queen's University, Belfast, is responsible for the professional training of solicitors and barristers. Trainee solicitors must undertake a 2-year apprenticeship which combines office-based work with studying the Certificate of Professional Studies at the IPLS. Solicitors who have qualified in England and Wales and Scotland may transfer to NI without taking any further exams.

⁶ SRA (note 4) Regulation 2.3(b).

⁷ For more discussion on QWE see Roper, V, Dunn, R and Kennedy, V. (2020) Clinical legal education as solicitor qualifying work experience in Thomas, L. and Johnson, N. (2020) Clinical Legal Education Handbook, University of London Press.

One interesting way that CLE might be developed is through the creation of a law firm within a law school. Johnson (2020) describes the model as a 'teaching law firm' that has similarities with clinical methodologies developed in US law schools. Some law schools may consider replicating the approach of Nottingham Trent Law School and applying for an alternative business structure (ABS) licence which allows for charging for some services. Nottingham Trent University's Legal Advice Centre provides a business and enterprise service that offers affordable legal advice to small businesses, charities and not for profit companies (Connelly, 2017). It is not a straightforward process to become an ABS and requires a significant commitment and investment from the university, but one of the benefits is the ability to charge for some services which may allow for some recuperation of costs. Although this may offer new ways of ensuring affordable access to legal services it is not without risk.⁸ There may be a growing interest in this approach as a way of delivering QWE. The offering of QWE may also align with individual university's broader strategy to embed employability further into its curricula especially for those universities whose students lack the connections and networks to advance easily into the profession. However, it is a strategy that is not without risk as extending clinical programs to include QWE requires support from the university to prioritise and well-resource CLE to ensure it preserves its rich learning environment and community benefit.

4.2 New models of clinical legal education

The expansion of clinical pedagogy in UK law schools has led to the development of different models of clinical legal education and these are likely to evolve further over the next 50 years. The increased use of technology in a post-COVID world requires law graduates of the future to be a different kind of legal professional who can work in teams with both an understanding of technology and creativity (Ryan, 2020). The Law Society (2018) argues that future lawyers need to be agile and adaptable, curious, and imaginative, coupled with having initiative and an entrepreneurial mindset. As technology transforms old ways of working future workers will need to develop virtual collaboration skills. The ability to use conference platforms and apps to maintain relationships with colleagues and clients is going to be critical for adapting to the changing work environment. Remote working and virtual collaboration are the new norm; clinical programmes are well positioned to respond to these changes and help students develop the skills and attributes required for new ways of working. This is recognised by the OU Law School: the creation of the Open Justice virtual law clinic gives students the opportunity to work with clients at a distance to acquire those skills (Ryan, 2020).⁹

Technology is not just changing how we interact at work, but in line with changes that are happening more broadly within the labour market it is also leading to questions about how new technologies will affect future jobs. Automation and algorithms have the potential to impact on all areas of work, including the delivery of legal services. Technology will create new opportunities, but it will also reduce some types of work (World Economic Forum, 2018). It is not just a proficiency in technological skills that is going to be important, but 'human' skills such as critical thinking, complex problem solving, persuasion and emotional intelligence are becoming even more valued (World Economic Forum, 2018). Current clinical pedagogies expose students to situations that challenge and test them; they encounter ethical issues and complex client situations that support the development of 'human skills' (Giddings, 2008). As we move into the next 50 years, technology is going to further augment and disrupt many industries. We need to consider how to leverage technology to develop new models of CLE that will not only enhance student learning, but support access to justice.

⁸ The creation of Alternative Business Structures to develop separate legal entities to deliver legal services has implication for social justice. Charging for legal services brings an ABS into competition with law firms, this may impact on the wider relationship with the legal profession. An exploration of these issues is outside the scope of this chapter but should be considered in further research.

⁹ <https://www.open.ac.uk/open-justice/legal-advice>

The use of artificial intelligence-based technology within legal practice has been much discussed, but the development of legal tech solutions has not so far been on the scale predicted by proponents of the tech revolution such as Richard Susskind¹⁰ (Sako *et al*, 2020). However, COVID- 19 may accelerate the adoption of new technologies to meet the challenges created by the economic consequences of the pandemic. In the future, we may see an investment in technology to move towards different operating models for legal practice. Working with emerging technologies will require a multi-disciplinary team approach that includes lawyers working with non-lawyers like data scientists, project managers and designers. This may become a new pattern of working in the future (Sako *et al*, 2020). Clinical programmes may explore new models of CLE to provide students with opportunities to work with technology in multi-disciplinary teams.

In recognition of the challenges posed by technology, UK law schools have started experimenting with legal tech and offering students hands-on opportunities to engage with emerging technologies. There is also a growing interest in the potential of legal tech to address the access to justice crisis (McFaul *et al*, 2020). Legal tech projects provide the opportunity for interdisciplinary and cross-faculty collaborations bringing together both students and academics to develop innovative technological solutions to benefit society (McFaul *et al*, 2020). The interest in legal tech has been influenced by the approaches adopted by some US universities, in particular the Legal Design Lab at Stanford University.¹¹ One of the functions of the Legal Design Lab is to be an interdisciplinary programme that introduces human-centred design methodologies into legal education. It adopts an experiential learning approach to its teaching and works in partnership with community organisations to develop innovative solutions to access to justice problems (Hagan, 2020). The future of CLE could see the further development of initiatives that adopt a partnership and multidisciplinary approach. One area where there needs to be more research is how more incubator projects can be scaled up beyond the law school (McFaul *et al*, 2020).

In the future we may also see the development of more project-based clinical legal education that shares some similarities with the work of the legal design labs but incorporates legal project management into its teaching (Carpenter, 2020). In project-based clinical legal education, the learning is student-driven; students work in interdisciplinary teams on a real-world problem to develop a project plan in collaboration with a project partner that could be a community organisation, the courts, or a group of self-represented litigants. The teacher facilitates and supports the team, but the group is responsible for managing all aspects of the project. Carpenter (2020) argues that students learn resilience and it helps to prepare for them for a complex changing world. Moving forward, clinical programmes are likely to continue to innovate to find new ways of bridging the gap between students' learning and supporting community engagement.

4.3 Looking to the future

The future of clinical legal education looks bright. The value of experiential learning in providing students with the opportunity to develop multidisciplinary skills required to navigate a changing world is recognised by many in legal education (Giddings *et al*, 2020). The potential to harness technology to help build and improve legal systems can drive future innovation in clinical legal education. But it is also recognised that there are challenges; higher education is dominated by neoliberal forces of globalisation, massification and marketisation (Bosanquet *et al*, 2020). Clinical programmes are not immune from the impact of neoliberal ideologies of increasing participation and the drive to create competitive advantage. The changes proposed by the regulators in England and Wales are complex and clinical programmes may struggle to

¹⁰ Richard Susskind argues that technology is going to transform the practice of law in many of his publications including *Tomorrow's Lawyers* (2019) Oxford University Press.

¹¹ <http://www.legaltechdesign.com/>

respond to the potential competing priorities of students and law schools. QWE may offer strategic opportunities for universities but it is not without risk. Law schools need a clear vision and adequate resources to expand their clinical programmes to provide students with these experiences. These are interesting times, but there is much reason for optimism, as over the past 50 years CLE has been able to navigate a complex path to becoming a defining feature of legal education. Although there may be challenges ahead, we are confident that CLE will remain a vibrant and dynamic part of the curriculum.

5. Conclusion

This chapter has explored the development of CLE in and beyond the UK and considered its contribution to enriching the learning experiences of law students. It has shown the important contribution clinical programmes make to developing law students' skills, but also to teaching the values of equality and justice. For those students who want to practice law after graduation, clinical work gives them the opportunity to work with clients and introduces them to practical legal work. At the same time, clinical programmes have expanded, and students benefit from a variety of innovative clinical learning experiences that have a broader and multidisciplinary focus.

COVID 19 has demonstrated how CLE is able to respond to a changing environment. Clinical programmes have begun to embrace digital technologies in a way that was unimaginable prior to the pandemic to ensure that they continue to deliver experiential learning opportunities for students and to support those with unmet legal need. Clinical legal education will face many challenges in the coming 50 years, especially in response to shifting regulatory frameworks, increasing pressures on university budgets and the accelerated pace of digital change instigated by the pandemic. However, this chapter's exploration of the history of CLE provides grounds for optimism that this dynamic pedagogy can continue to make a dynamic contribution to the future of legal education.

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